IN THE MUNICIPAL COURT OF THE STATE OF WASHINGTON
IN AND FOR THE CITY OF SEATTLE

CITY OF SEATTLE,

Plaintiff,

vs.

JOLENE PARIS,

Defendant.

NO. 637209

DEFENSE REPLY BRIEF,
MOTION TO DISMISS

I. FACTS

For the purposes of this motion and the attached memorandum of law, the following facts are presumed true and are found in the discovery provided to the defense, namely incident report 18-284533, the associated body-worn videos, recorded statements by the defendant, stipulated facts or uncontestable testimony. Nothing here constitutes an admission for purposes of a trial.

On August 1, 2018, Seattle Police Department created a "bike bait" operation at the Goodwill in SODO, an area where many homeless people live and congregate. SPD placed a bicycle outside the Goodwill to "bait" individuals to take it. SPD officers then made contact with the individual and asked each individual whether they owned the bike, or if anyone gave them permission to take the bike. Everyone who took the bike was booked into jail.

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Jolene Paris was one of those people who was arrested and booked. Ms. Paris is a homeless Seattle resident. She saw the bike outside the Goodwill, and was concerned someone would steal the bike. She then walked and rode the bike through the Goodwill parking lot, talking to different people about the bike, asking if it was theirs. She was arrested inside the Goodwill parking lot.

Signed this 13th day of September, 2019.

/s/ Brandon Davis
Brandon Davis, WSBA# 53819

II. ISSUES

1. Whether the City has insufficient evidence as a matter of law to support a conviction for theft?
2. Whether the Court should dismiss this as de minimis?

III. ARGUMENT

a. The Issue Should Be Decided Under *Knapstad* Because There Is No Material Issue Of Fact, and the City Cannot Disprove Defense of Good Faith Claim of Title

In *State v. Knapstad,* 107 Wn.2d 346, 729 P.2d 48 (1986), the Washington Supreme Court outlined the criteria for granting dismissal. The court must look at the facts in a light most favorable to the prosecution, and ask if upon a viewing of the evidence, a reasonable trier of those facts could conclude that the necessary elements of the crime existed beyond a reasonable doubt. *Id.* If the court concludes it is impossible for the City to get a conviction, it is proper to dismiss the case. *Id.* (*See also State v. Wilhelm*, 78 Wn. App. 188, 191, 896 P.2d 105 (1995)

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("[W]e will affirm the trial court's dismissal under *Knapstad* if no rational fact finder could have found the essential elements of the crime…beyond a reasonable doubt.") (*See also State v. Reid,* 98 Wn. App. 152, 988 P.2d 1038 (1999) (Upon the proper motion the trial court could rule on the applicability of the defense as a matter of law).

The City has argued that whether or not Ms. Paris acted with intent to deprive another of their property is a matter that must be resolved by the jury. City Response Brief, 4. Defense maintains that even under the light most favorable to the City, a reasonable juror could not find that the Defendant acted with the intent to deprive another of their property. This is especially so when the court considers the affirmative defense of "good faith claim of title." The provision reads "In any prosecution under this Section 12A.08.060, it is an affirmative defense that the property or services were openly obtained under a claim of title made in good faith, even though the claim be untenable." SMC 12A.08.060(C).

It is proper for a court to look at that affirmative defense in a *Knapstad* setting. In *State v. Reid* the court held that while the affirmative defense was normally for the trier of fact, "[I]f the evidence were susceptible of only one inference, upon proper motion the trial court could rule on the applicability of the defense as a matter of law." *State v. Reid*, 98 Wn. App. 152, 163, 988 P.2d 1038 (1999).

In *City of Spokane v. Beck* citing to *Reid;* "Division Two explored the defense in the context of a suppression hearing where the defendant was charged with physical control, obstructing a police officer, and felony possession of a firearm. *Reid,* 98 Wash.App. at 154, 988 P.2d 1038. The defendant argued that because the police lacked probable cause to arrest, the fruits of the search incident to that arrest should be suppressed. One such issue was whether the

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officer had probable cause to arrest the defendant if there were facts present to constitute the affirmative defense. *Id.* at 162–64, 988 P.2d 1038. The court decided that the officer may (constitutionally) arrest the suspect because "[a]t the time of arrest, the officer cannot know and it would be unreasonable to require him to estimate the likelihood of success of a potential affirmative defense." *Id.* at 163, 988 P.2d 1038. Accordingly, the court held that it would be premature for a trial court to rule on the merits of the defense in a suppression order unless "the evidence were susceptible of only one inference." *Id.* at 164, 988 P.2d 1038. Notably, this portion of *Reid* has not been cited by any court since." *City of Spokane v. Beck* 130 Wash. App 481 (2005).

The procedural facts in *Beck* differ from *Reid*. Ms. Beck "challenged the denial of her motions to dismiss at the end of the State's case in chief and at the close of evidence asserting she had proven she was safely off the roadway." In reviewing the sufficiency of the evidence the appeals court considered the affirmative defense raised and concluded a dismissal was warranted based on that. Id at 485.

The Court reasoned that "The questions on review in *Reid* as well as the posture of [this] case make [*Reid*] distinguishable from the case before us. First, the issue before the superior court in Ms. Beck's case was sufficiency of evidence in light of an affirmative defense, not suppression. Second, because it was a pretrial hearing, the evidence was not yet fully developed in *Reid.* ***But here the entire matter had been heard and each party presented a case.***" Id at 488.

This matter at bar is analogous more to the factual situation in *Beck* than *Reid*. In a suppression hearing such as was had in *Reid*, no factual findings are made with respect to any evidence discovered after that which is sought to be suppressed. For example when there is an

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argument that there was no probable cause to arrest, the court would only determine the evidence leading up to the arrest. At that point the inquiry would end. In a Knapstad hearing the court reviews all facts as alleged in light most favorable to the prosecution. If the court finds that the only conclusion is that a reasonable jury would acquit, then the court must dismiss. There is no explicit bar to this inquiry when an affirmative defense is at play and founded by a preponderance of the evidence.

The City may cite to *City of Edmonds v. Ostby* to contend that a court has no Knapstad dismissal authority when an affirmative defense is a necessary part of a finding on which to base a dismissal. *Edmonds v. Ostby* 48 Wash.App. at 870, 740 P.2d 916 (1987); *State v. Falconer*, 110 Wash.App. 850 (Div. 2 2015). *Ostby* held that "[w]hether the vehicle was 'safely off the roadway' is a factual issue to be decided by the trier of fact." Id at 871. However, that court provided no further analysis to this statement. A rule should not be made without analysis.

In brushing aside the importance of *Ostby*, the *Beck* Court wrote that "Notably, *Ostby* was decided before *Lively,* where the Washington Supreme Court first decided the standard of review for challenges to the sufficiency of the evidence to support a conviction based on an affirmative defense. *Lively,* 130 Wash.2d at 17, 921 P.2d 1035." *Beck* at 487.

The *Lively* Court held that "Other jurisdictions have examined the standard of review for sufficiency of the evidence when a defendant is required to prove an affirmative defense by a preponderance of the evidence. The appropriate standard of review in such cases is whether, considering the evidence in the light most favorable to the State, a rational trier of fact could have found that the defendant failed to prove the defense by a preponderance of the evidence. We are persuaded that this test provides the appropriate means of reviewing the sufficiency of

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evidence relating to an affirmative defense." *Lively,* 130 Wash.2d at 17, 921 P.2d 1035at 1044 (1996).

In this matter, it is the City's burden to disprove good faith claim of title beyond a reasonable doubt. The undisputed facts in this case clearly support an application of the defense as a matter of law. The defendant specifically told officers that she was attempting to find the owner of the bike while walking it around the parking lot, and there are no facts in evidence to dispute that defense. As discussed above, once the statutory defense is in play it is impossible for the City to obtain a conviction. Even construing all evidence in favor of the prosecution, there is no evidence to dispute the defense of good faith claim of title. Pursuant to *Knapstad*, the prosecution must be dismissed.

b. This case should also be dismissed under the de minimis statute.

The City's brief discusses each subsection of the de minimis statute in its assertion that the conduct here does not merit dismissal under the de minimis statute. Regarding the "customary license or tolerance not inconsistent with the law," the City asserts that "there is no evidence whatsoever that the City has customarily licensed or tolerated people to take property that they had not been given permission to take or take property that knows does not belong to them." City's Brief at 6. Defense disputes this assertion.

First, it should be noted that it is highly unusual for someone who owns a bike to leave it unattended and unlocked. This is even more strange for an area that is known to be a hotspot for bike thefts, as SPD suggests. This location is also known as a meeting place for homeless people living in nearby homeless encampments. It is entirely reasonable for an individual to see a bike of this nature and think it was "up for grabs," abandoned or discarded property – because what

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person who wants to keep their bike would leave it lying unlocked in an area known for bike thefts?

Second, more to the point of Ms. Paris's case, it is also reasonable for a person to see a bike unlocked, and attempt to find the bike's owner in the nearby area. Ms. Paris's conduct is more in line with a Good Samaritan than a thief. It is disturbing that a person who struggles with homelessness and yet hasn't been convicted with theft since 2005 is back in court for this alleged conduct.

Next, the City addresses the second subsection of the de minimis statute. 12A.04.180(B) allows the Court to dismiss a case where the conduct "did not cause the type of harm sought to be prevented or did so in only a trivial way." The City argues that this subsection does not apply to the facts. The City argues, "The defendant took possession of property that was not hers thereby **depriving and harming** the owner." City's Brief at 6 (emphasis added). But of course, the defendant did not deprive or harm anyone. The bike was placed in the Goodwill parking lot for the express purpose of being taken. The City cannot assert that the Seattle Police Department was harmed or deprived when Ms. Paris took that bike. If anything, Ms. Paris's taking gave justification to their operation. In support of their position, the City cites a number of out-of-state cases in which a minor theft was not dismissed under the de minimis statute – shoplifting for a bow, for example, or bubble gum. All of the cases cited by the City, however, involve *actual* harm to an *actual* victim. None of these cases involve a "sting" operation such as this one.

Last, the City addresses subsection C of the statute, which allows for dismissal if the conduct "presents such other extenuations that it cannot reasonably be regarded as envisioned by the legislature in forbidding the offense." The City argues there are no "extenuating" or

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"mitigating" factors. City's Response Brief, at 8. Defense respectfully, but vigorously, disagrees. This was a sting operation that targeted homeless people. It strains credulity that the legislature intended for the criminal statute to be used in this way.

IV. CONCLUSION

Dismissal under *Knapstad* is appropriate, even looking at the facts in a light most favorable to the City, they are unable to contest the defense. Even if the Court finds the City can prove their case at trial, the case should be dismissed under the de minimis statute. For these reasons, the defense respectfully requests this court to dismiss the charge.

Respectfully submitted this 13th day of September, 2019.

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